

1 Daniel P. Wierzba (Ariz. Bar No. 028297)
2 SEYFARTH SHAW LLP
3 2029 Century Park East, Suite 3500
4 Los Angeles, California 90067-3021
5 Telephone: (310) 277-7200
6 Facsimile: (310) 201-5219
7 Email: dwierzba@seyfarth.com

8 Pamela Q. Devata (Illinois Bar No. 6275731)
9 John W. Drury (Illinois Bar No. 6282785)
10 (Pro Hac Vice Pending)
11 SEYFARTH SHAW LLP
12 131 South Dearborn Street, Suite 2400
13 Chicago, Illinois 60603
14 Telephone: (312) 460-5000
15 Facsimile: (312) 460-7000
16 Email: pdevata@seyfarth.com
17 jdrury@seyfarth.com

18 Attorneys for Defendant Data Diver Technologies, LLC

19
20 **IN THE UNITED STATES DISTRICT COURT**
21
22 **FOR THE DISTRICT OF ARIZONA**

23 STEPHANIE MYERS,
24 Plaintiff,
25 v.
26 DATA DIVER TECHNOLOGIES, LLC,
27 Defendant.

28 Case No. _____

**NOTICE OF REMOVAL WITH
VERIFICATION OF DANIEL
WIERZBA**

Removal from Superior Court, County of
Maricopa, Case No.: CV2015-052476

21
22 **TO: THE HONORABLE JUDGES AND CLERK OF THE ABOVE-ENTITLED**
23 **COURT**

24 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and
25 1446, Defendant Data Diver Technologies, LLC (“Data Diver”), by and through its
26 attorneys, Seyfarth Shaw LLP, files this Notice of Removal with respect to Case No.
27 CV2015-052476, filed in the Superior Court of the State of Arizona, County of Maricopa.
28 In support of this Notice, Data Diver states as follows:

1 **I. Background**

2 1. On June 15, 2015, Plaintiff Stephanie Myers filed a purported class action
3 Complaint in the Superior Court of Maricopa County, entitled *Stephanie Myers v. Data*
4 *Diver Technologies, LLC*, Case No. CV2015-052476 (the “Superior Court Action”).
5 True and accurate copies of all process, pleadings, and orders filed in the Superior Court
6 Action are attached hereto as Exhibit A.

7 2. On July 2, 2015, Data Diver was served with a summons and a copy of the
8 Complaint. There are no other defendants in this matter

9 3. In accordance with 28 U.S.C. § 1446(b), Data Diver filed this Notice of
10 Removal within thirty (30) days of receipt of Plaintiff’s Complaint, and within one year
11 of the commencement of the Superior Court Action.

12 4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this
13 District and division embrace Maricopa County, Arizona, the place where the Superior
14 Court Action was filed.

15 5. Written notice of the filing of this Notice of Removal is being delivered to
16 Plaintiff through her counsel of record. Pursuant to 28 U.S.C. § 1446 and L.R. Civ.
17 3.6(a), a copy of the Notice of Removal will be filed with the Clerk of the Court of the
18 Superior Court, County of Maricopa. *See* Exhibit B.

19 6. Under 28 U.S.C. § 1331, “the district courts shall have original jurisdiction
20 of all civil actions arising under the Constitution, laws or treaties of the United States.”
21 Therefore, this Court has original jurisdiction over the instant action based on federal
22 question jurisdiction.

23 7. In addition, pursuant to 28 U.S.C. § 1337, this Court has supplemental
24 jurisdiction over Plaintiff’s claim brought under the Texas Business and Commercial
25 Code.

26 8. Data Diver files this Notice in accordance with Fed. R. Civ. P. 11.

27 9. By filing this Notice of Removal, Data Diver does not concede nor waive
28 any defense to this action, including that Plaintiff lacks standing to bring this action.

1 Data Diver reserves all defenses relating to the Court's jurisdiction and the justiciability
2 of this action.

3 **II. Removal is Proper Because this Court has Subject Matter Jurisdiction
4 Pursuant to 28 U.S.C. §§ 1331 and 1367.**

5 **A. Federal Question Jurisdiction Exists Because Plaintiff's Complaint
6 Asserts a Claim Under Federal Law.**

7 10. 28 U.S.C. § 1331 provides that "the district courts shall have original
8 jurisdiction of all civil actions arising under the Constitution, laws or treaties of the
United States."

9 11. Plaintiff's Complaint asserts a claim under the federal Fair Credit Reporting
10 Act, 15 U.S.C. § 1681c(a). *See* Compl., ¶¶ 55-61.

11 12. Pursuant to 28 U.S.C. § 1331, this Court therefore has original federal
12 question jurisdiction over Plaintiff's FCRA claim because this claim arises under the laws
13 of the United States. Accordingly, removal of Plaintiff's Complaint is proper pursuant to
14 28 U.S.C. § 1331.

15 **B. Supplemental Jurisdiction Exists Over Plaintiff's State Law Claim.**

16 13. 28 U.S.C. § 1367 provides that "in any civil action of which the district
17 courts have original jurisdiction, the district courts shall have supplemental jurisdiction
18 over all other claims that are so related to the claims in the action with such original
19 jurisdiction that they form part of the same case or controversy under Article III of the
20 United States Constitution."

21 14. In Count II of the Complaint, Plaintiff asserts a claim under the Texas
22 Business and Commercial Code. *See* Compl. ¶¶ 62-68.

23 15. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over
24 Count II of the Complaint. Count II arises out of the same alleged conduct that forms the
25 basis for Plaintiff's FCRA claim in Count I of the Complaint, and thus forms part of the
26 same case or controversy under Article III of the United States Constitution. Moreover,
27 Plaintiff's state law claim does not raise novel or complex issues of state law (which, in
28 any event, is the law of another jurisdiction from where Plaintiff filed her lawsuit), nor

does it substantially predominate over Plaintiff's FCRA claim. Moreover, Plaintiff's state law claim is likely preempted by the FCRA.

16. Accordingly, supplemental jurisdiction over Count II of the Complaint is proper.

WHEREFORE, Data Diver respectfully requests that this Notice of Removal be filed, that the Superior Court Action be removed to and proceed hereafter in this Court, and that no further proceedings be had in the Superior Court action.

DATED: July 30, 2015

Respectfully Submitted,

SEYFARTH SHAW LLP

By: /s/ Daniel P. Wierzba

Daniel P. Wierzbak

Pamela Q. Devata

John W. Drury

Attorneys for Defendant
Data Diver Technologies, LLC

VERIFICATION OF DANIEL P. WIERZBA

I, Daniel P. Wierzba, verify as follows:

1. I am an active member in good standing of the State Bar of Arizona and an attorney with the law firm of Seyfarth Shaw, L.L.P., counsel of record for Defendant Data Diver Technologies, LLC. I have firsthand knowledge of the matters set forth herein. I submit this verification pursuant to L.R. Civ. P. 3.6(b) and Fed. R. Civ. P. 11.

2. Attached as Exhibit A are true and correct copies of all pleadings and other documents filed in the state court civil action originally commenced in the Superior Court of the State of Arizona, in and for the County of Maricopa, entitled *Stephanie Myers, Plaintiff v. Data Diver Technologies, LLC, Defendant*, Case No. CV2015-052476.

I verify that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of July, 2015, at Los Angeles, California.

/s/ Daniel P. Wierzba
Daniel P. Wierzba

CERTIFICATE OF SERVICE

I, Daniel Wierzba, an attorney, certify that I caused a copy of the attached **NOTICE OF REMOVAL WITH VERIFICATION OF DANIEL WIERZBA** to be served upon the following counsel of record through the Court's electronic case filing system, and by U.S. Mail, on July 30, 2015, upon the following counsel of record:

Paul B. Mengedoth
20909 N. 90th Place, Suite 211
Scottsdale, AZ 85255

/s/ *Daniel P. Wierzba*

Daniel Wierzba